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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR        | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------------|---------------------|------------------|
| 10/661,080  | 09/12/2003  | Michael Joseph Ruggiero JR. |                     | 7103             |
| 7590  | 08/25/2004  |                             | EXAMINER            |                  |
| Michael J. Ruggiero Jr.<br>20 Blossom Grove Ct.<br>Highland, NY 12528 |             |                             | GRILES, BETHANY L   |                  |
|   |             |                             | ART UNIT            | PAPER NUMBER     |
|   |             |                             | 3643                |                  |

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                          |  |
|------------------------------|-------------------------------|--------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>        | <b>Applicant(s)</b>      |  |
|                              | 10/661,080                    | RUGGIERO, MICHAEL JOSEPH |  |
|                              | Examiner<br>Bethany L. Griles | Art Unit<br>3643         |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on amendment filed 6/23/04.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 11-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 11-17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection, and in light of the rejection of the new claims.

***Claim Rejections - 35 USC § 112***

Claim 11 recites the limitation "the refreshment" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by LaBarba (US3990495).

Regarding claim 11, LaBarba discloses a pet dish 12 in which contents are thermally controlled by a conditioning source 84, 86, 88 to aid in the longevity of the rerefreshment.

Regarding claim 12, LaBarba discloses that multiple conditioning sources 84, 86, 88 may be present to enhance the performance of the dish 12.

Regarding claim 13, LaBarba discloses the conditioning sources can be regenerated (col 3, line 66 discloses the elements 84, 86, 88 can be inserted, and col 4, line 15 discloses they can be removed from the structure if needed). The contents of the dish 12 could be either hot or cold and still benefit from the insulative properties of the conditioning sources 84, 86, 88.

Regarding claim 14, LaBarba discloses that the conditioning can be adjusted in size to accommodate means of regeneration (col 3, line 65 discloses 84, 86, 88 can be cut in a shape to fit within the unit; col 4, line 30 discloses the conditioning means may be configured to fit different shaped dishes).

Regarding claim 15, LaBarba discloses the conditioning source is thermally insulated from the exterior environment while thermal energy is directed towards the contents of the dish (col 4, lines 6-13).

Regarding claim 17, LaBarba discloses the dish 12 may be used with or without conditioning sources 84, 86, 88 present (col 2, lines 24-28 disclose the dish being used for cooking without the conditioning units present).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaBarba in view of Tobin US6230653.

Regarding claim 16, LaBarba substantially discloses the invention as discussed in the above claims.

LaBarba does not disclose that the dish has non-skid and weight distribution properties.

Tobin discloses a pet dish with non-skid 4 and weight distribution properties (See figure 1 for an illustration of the weight distribution of the unit, which is much larger in diameter at the bottom and therefore carries more weight, displaying weight-distribution properties desired to keep the device from skidding or tipping over.).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Tobin of a non skid dish to the invention of LaBarba in order to make the handling and use of the device safer, as a human or animal trying to extract food from the dish would be less likely to tip the dish over and subsequently be burned or otherwise injured.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/661,080  
Art Unit: 3643

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*Bethany L. Griles*

Bethany L. Griles  
Examiner  
Art Unit 3643

blg

*Peter M. Poon*

Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600